

REMARKS

Claims 10 to 23 are pending in the present application.

Reconsideration is respectfully requested based on the following.

AS TO PARAGRAPHS 2, 4 AND 5 AT PAGE 2 OF THE OFFICE ACTION, IT IS RESPECTFULLY REQUESTED THAT THE EXAMINER SPECIFICALLY EXPLAIN HOW THE EXAMINER CAN POSSIBLY MAINTAIN REJECTIONS BASED ON WILLIAMS, U.S. PATENT APPLICATION PUBLICATION NO. 2006/0253239, AND SCHUBERT ET AL., U.S. PATENT NO. 7,269,483, WHEN THOSE REFERENCES WERE IRREFUTABLY SHOWN IN THE PRIOR RESPONSE TO NOT BE PRIOR ART SINCE THE PRESENT APPLICATION HAS A PCT FILING DATE OF MARCH 12, 2003 – WHICH IS BEFORE THE FILING DATES OF THESE TWO REFERENCES, SINCE THE UNDERLYING PCT APPLICATION OF THE PRESENT APPLICATION DESIGNATED THE UNITED STATES.

ALSO, THE PRIOR RESPONSE OF FEBRUARY 4, 2009 IS INCORPORATED BY REFERENCE AS NECESSARY AS TO ANY REJECTIONS MAINTAINED AS TO THE PRIOR OFFICE ACTION.

In particular, as to the Williams reference, U.S. Patent Application Publication No. 2006/0253239, it was only filed on April 21, 2006 (with a priority date of April 25, 2005 based on provisional application No. 60/674,469) and issued on November 9, 2006. Therefore, the Williams reference is not prior art since the present application has a PCT filing application date March 12, 2003 (PCT/DE03/00781), which designated the United States.

ACCORDINGLY, WILLIAMS IS NOT PRIOR ART AS TO THE PRESENT APPLICATION.

While not relied upon, it is noted (for purposes of completeness) that the present application also claims priority to its German priority patent application of DE 102 35 567.3, which was filed in Germany on August 3, 2002, as the Office Action acknowledged. It is also noted that for an applied reference date based on 35 U.S.C. 102(e), as here, the Williams reference is not prior art under 103(c), since the subject matter and the claimed

invention, were at the time the claimed invention was made, were assigned or under an obligation of assignment to the present applicant, namely, Robert Bosch GmbH. It is therefore respectfully requested that the Section 103(a) rejection be withdrawn since it is not prior art, so that claim 10 is allowable (as are its dependent claims)).

Also, as to the secondary Schubert reference (U.S. Patent No. 7,269,483), it is also not prior art. The Schubert reference was only filed on August 19, 2004 and was issued on September 11, 2007, and thus is also not prior art as to the present application. In contrast, the present application has a PCT filing application date March 12, 2003 (PCT/DE03/00781), which designated the United States.

ACCORDINGLY, SCHUBERT IS NOT PRIOR ART AS TO THE PRESENT APPLICATION.

While not relied upon, it is noted (for purposes of completeness) that the present application also claims priority to its German priority patent application of DE 102 35 567.3, which was filed in Germany on August 3, 2002, as the Office Action acknowledged). It is therefore respectfully requested that the Section 103(a) rejection be withdrawn since it is not prior art, so that claim 10 is allowable (as are its dependent claims).

Claims 10 to 18 were rejected under 35 U.S.C. § 102(e) as anticipated by Breed, U.S. Patent Application Publication No. 2006/0232052 (the "Williams" reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily*

flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Breed reference is not prior art as to the present application. In particular, as to the Breed reference, U.S. Patent Application Publication No. 2006/0232052, it was only filed on June 1, 2006 and issued on October 19, 2006. Therefore, the Williams reference is not prior art since the present application has an earlier PCT filing application date of March 12, 2003 (PCT/DE03/00781), which designated the United States.

As to the priority application information of Breed, the following is respectfully submitted:

First, Breed on its face is a C-I-P of 11/131,623 (“Breed 2”) filed on May 18, 2005. Even if Breed is entitled to claim priority to this date (which is not conceded), this date is AFTER the March 12, 2003 PCT filing date of the present application.

Second, Breed 2 on its face is a C-I-P of 10/043,557 filed on January 11, 2002, now U.S. Patent No. 6,905,135 (Breed 3). The Breed reference is NOT entitled to claim priority to this date as to the asserted subject matter. This is because Breed 3 (U.S. Patent No. 6,905,135) does not in any way disclose an apparatus for detecting a rollover event as specifically asserted. For example, the Examiner cites Figure 1A of Breed, but this Figure is not in Breed 3. Accordingly, Breed at best MIGHT be able to claim priority to Breed 2 (although this not conceded, since the application has not been obtained and reviewed). Even so, the filing date of Breed 2 is AFTER the March 12, 2003 PCT filing date of the present application.

ACCORDINGLY, BREED IS NOT PRIOR ART AS TO THE PRESENT APPLICATION.

Claims 10 to 18 are therefore not anticipated by the Breed reference, as specifically asserted.

Claims 13 to 15 were rejected under 35 U.S.C. § 103(a) over the Breed reference in view of Lin et al., U.S. Patent Application Publication No. 2006/0100781.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As explained above, Breed is not prior art as to the present application. The secondary Lin reference does not cure the deficiencies resulting from the fact that Breed is not prior art. Accordingly, claims 13 to 15 are allowable.

Accordingly, claims 10 to 23 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 10 to 23 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

Date: _____

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By: _____

Gerard A. Messina
(Reg. No. 35,952)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

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